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In re Application of COHEN et al :  
U.S. Application No.: 10/591,538 :  
PCT Application No.: PCT/IB2005/000896 :  
Int. Filing Date: 04 March 2005 : DECISION  
Priority Date Claimed: 04 March 2004 :  
Attorney Docket No.: 065691-0466 :  
For: PREPARATION OF RECOMBINANT :  
ROTAVIRUS PROTEINS IN MILK. . . :

This is in response to the declaration filed 23 June 2008, which is being treated as a request for status under 37 CFR 1.42.

**BACKGROUND**

On 04 March 2005, applicant filed international application PCT/IB2005/000896, which claimed priority of an earlier European Patent Office application filed 04 March 2004. A copy of the international application was communicated to the USPTO from the International Bureau on 15 September 2005. The thirty-month period for paying the basic national fee in the United States expired on 04 September 2006.

On 01 September 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 09 April 2008, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/903), which indicated that an oath or declaration under 37 CFR 1.497 must be submitted.

On 23 June 2008, applicant filed the present request for status under 37 CFR 1.42 along with executed declarations.

**DISCUSSION**

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

In the present case, the declaration executed by Serge Cohen states that inventor Jean Cohen is deceased. This declaration is improper because it fails to list all of the inventors as required by 37 CFR 1.497(a)(3). Specifically, the declaration fails to list inventors Soler, Houdebine, Schwartz-Cornil, Forgeux, Perez, and Garbarg-Chenon. This declaration is further defective because it fails to list the citizenship of one of the inventor Jean Cohen as required by 37 CFR 1.497(a)(3) and the legal representative Serge Cohen as required by 37 CFR 1.497(b)(2). Applicant is advised that a single indication of citizenship in the signature block cannot be used for both the deceased inventor and the legal representative. The declaration executed by inventors Soler, Houdebine, Schwartz-Cornil, Forgeux, Perez, and Garbarg-Chenon is improper because it fails to list all of the inventors as required by 37 CFR 1.497(a)(3). Specifically, the declaration fails to list inventor Cohen.

### CONCLUSION

For the reasons above, the request for status under 37 CFR 1.42 is DISMISSED without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Request for Status Under 37 CFR 1.42".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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